



SENATOR RUNNER'S WEEK IN REVIEW

A WEEKLY REVIEW THAT WILL KEEP YOU INFORMED AND UP-TO-DATE



If you have been forwarded this message and would like to subscribe to future publications or you wish to no longer receive future publications please [contact me here](#).

Proposition 218 Update

When Proposition 13 passed 27 years ago, California voters did more than cut property taxes. They amended the State constitution to require that future state tax increases and new state taxes be approved by two-thirds of the State Legislature and that local government tax increases be approved by popular vote. In 1996, California voters approved Proposition 218, which in part deemed all local taxes to be either general or special taxes and required all new or increased taxes to get voter approval--majority approval for general taxes; 2/3-voter approval for special taxes.

Proposition 218 significantly changed local government finance and has become one of the greatest protections for the California citizen. This constitutional initiative applies to each of California's nearly 7,000 cities, counties, special districts, schools, community college districts, redevelopment agencies, and regional organizations. Proposition 218, known as the "Right to Vote on Taxes Act," added two amendments to the California Constitution: (1) Article XIII C, which provides that "the power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments"; and (2) Article XIII D, providing for property-related fee reform.

A New Look For Prop 218

On July 24, 2006, the California Supreme Court ruled that a public agency's water rates and charges for ongoing water delivery are subject to the initiative provisions of Article XIII C, Section 3 and are property-related fees and charges subject to the provisions of Article XIII D, Section 6, of the California Constitution.

The case, Bighorn-Desert View Water Agency v. Virjil, decided the issue of whether utility rates are subject to Prop. 218 or not before the ruling was handed down, this case was seen by observers as the most important case pending before the courts for local agencies. This case would determine whether user fees and commodity charges – such as those for water services – are subject to Prop. 218.

News of the Week

[Questionable LAUSD Reform Bill Moves Ahead](#)

[Proposals to Build New Prisons Being Debated in Committee](#)

[Corporate Tax Law Upheld](#)

[Runner's Bill to Speed Up Construction in Victorville Moves Forward](#)

[Drivers License for Illegal Immigrants Stalled](#)

[C-17 Crucial to Terror War, Disaster Relief](#)

[Senate Okays Redistricting Plan](#)

[Editorial: Failing the Test](#)

Bighorn-Desert View Water Agency v. Virgil

In a unanimous decision, the California Supreme Court held that charges for water delivery are property-related and subject to Proposition 218 restrictions. The Bighorn case concerned a ballot initiative to reduce the water rates of the Bighorn-Desert View Water Agency, a special district that provides domestic water service.

The Bighorn case surrounded a dispute over a local voter initiative that sought to decrease water rates and require future increases to be approved by the voters. The initiative proponent sought to reduce the agency's then current and future water rates. The county registrar certified the initiative and informed the agency that it had to either adopt the initiative or place it before the voters at a special election. The agency refused to take either action, arguing that its board of directors had exclusive authority to set rates and challenged the legality of the initiative. The case eventually went to the California Supreme Court.

The Bighorn-Desert View Water Agency argued that consumption-based water charges are not fees or charges within the meaning of Article XIII D of the California Constitution because they are not imposed as an incident of property ownership, but instead are incurred as a result of the voluntary decision of each water customer to use the water provided by the agency. The court was not persuaded, instead stating that once a property owner or resident has paid the connection charges and become a customer of a water agency, the charges for ongoing delivery of water are property related, whether the charge is calculated on the basis of consumption or is imposed as a fixed monthly fee.

Conclusion

Having concluded that fees and charges for ongoing water delivery are property-related fees pursuant to Article XIII D, the court concluded that such fees and charges are subject to the voter initiative provisions of Proposition 218 "insofar as they seek to reduce or repeal a public agency's water rates and other water delivery charges." The court, however, found that the initiative provisions of Article XIII C did not authorize "initiative measures that impose voter-approval requirements for future increases in fees or charges." In short, the initiative process may be used to reduce or repeal water fees and charges, but it may not be used to impose voting requirements that currently do not exist under the current provisions of Article XIII D respecting property-related fees and charges.

The California League of Cities has asserted that this raises a question as to whether voters could reduce water rates via initiative where the proceeds from those rates are pledged to bonds or other uses if the reduced rates would not permit the agency to meet its obligations to bondholders. This question will likely be resolved through future litigation.

The Supreme Court's decision also ensures that water rates are subject to the Proposition 218's majority approval requirement. This may cause some concern for agencies that adopted rate increases prior to this decision without complying with the majority requirement. Therefore, these agencies may need to revisit these prior rate increases.

Affected local entities continue to review and analyze the decision to determine what the case means for water agencies and voters alike in terms of notice for future increases and complying with Proposition 218 requirements. However, the case makes clear that water delivery is a property related service as defined in Article XIII D and, therefore, water rates charged for water delivery are subject to Proposition 218.

If you would like to contact Senator Runner, please click
here: [Email](#) - [Website](#)

OFFICES

Capitol

State Capitol, Room 4066
Sacramento, CA 95814
Phone: 916-651-4017
Fax: 916-445-4662

Antelope Valley

848 W. Lancaster Blvd, Ste 101
Lancaster, CA 93534
Phone: 661-729-6232
Fax: 661-729-1683

Victorville

Victorville City Hall
14343 Civic Drive, First Floor
Victorville, CA 92392
Phone: 760-843-8414
Fax: 760-843-8348

Santa Clarita – San Fernando Valley – Ventura County

Santa Clarita City Hall
23920 Valencia Blvd., Suite 250
Santa Clarita, CA 91355
Phone: 661-286-1471 Santa
Clarita Valley
Phone: 661-286-1472 San
Fernando Valley & Ventura County
Fax: 661-286-2543